

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANNE M. PRONTI,

Plaintiff,

ORDER

02-CV-6309L

V.

JO ANNE B. BARNHART, as Commissioner  
of the Social Security Administration,

Defendant.

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CURTIS L. BALLARD,

Plaintiff,

03-CV-6090L

V.

JO ANNE B. BARNHART, as Commissioner  
of the Social Security Administration,

Defendant.

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KIMOTHY ZIMMERMAN,

Plaintiff,

V.

03-CV-6664L

JO ANNE B. BARNHART, as Commissioner  
of the Social Security Administration,

Defendant.

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In these cases, there are a number of motions pending before the Court pertaining to the manner in which the Commissioner conducted an investigation into the alleged bias of ALJ Franklin T. Russell. Among the issues are whether the Commissioner fully complied with the remand issued by this Court on September 13, 2004 pursuant to sentence six of 42 U.S.C. § 405(g); the effect, if any, of the Commissioner's November 30, 2005 Final Agency Decision on plaintiffs' federal court cases; whether this Court currently has jurisdiction and other matters relating to justiciability, ripeness and mootness.

These cases were commenced because of allegations concerning the manner in which ALJ Russell routinely decided cases before him. Much has been written on this subject not only by the aggrieved attorneys, but by this Court and by the Commissioner in the 27 page, so called, Final Agency Decision.

The present and future status of ALJ Russell as an Administrative Law Judge may have a bearing on the decision, or decisions, by this Court. His status is not clear.

According to the Commissioner, the Appeals Council has granted "all pending request for review of less than fully favorable decisions rendered by ALJ Russell" and those cases will be reassigned to different ALJs. In addition, the Syracuse Hearing Office has reassigned all of the requests for hearing that were pending before ALJ Russell. (*Pronti*, Dkt. #38, p.14). Plaintiffs state that, to the best of their knowledge, however, ALJ Russell has not been relieved of his office and that there is no assurance that ALJ Russell will not be adjudicating cases in the future. (*Ballard*, Dkt. #23, p.2).


The current and future status of ALJ Russell may or may not affect the determination of the pending motions. Nevertheless, so that there is a clear record before the Court, the Commissioner is hereby,

ORDERED, to provide information to the Court regarding the status of ALJ Russell as an Administrative Law Judge. Has he been placed on administrative leave? Will he be presiding over future social security hearings? Is he retiring?

If the Commissioner has concerns about disclosing confidential or personnel information, she may file her response to this Order under seal.

The Commissioner should file her response to this Order on or before June 22, 2006.

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
June 13, 2006.